

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID DWAYNE EVANS,

Petitioner,

No. 04-CV-74187-DT

vs.

Hon. Gerald E. Rosen

STATE OF MICHIGAN,

Respondent.

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ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND
DISMISSING PLAINTIFF'S HABEAS CORPUS ACTION

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on October, 7, 2005

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter having come before the Court on the September 14, 2005 Report and Recommendation of United States Magistrate Judge Paul J. Komives recommending that the Court grant Respondent's Motion for Summary Judgment and dismiss Petitioner David Dwayne Evans's application for a writ of habeas corpus; and no timely objections to the Magistrate Judge's Report and Recommendation having been filed; and the Court having reviewed the Magistrate Judge's Report and Recommendation and the Court's file of this action and having concluded that, for the reasons stated in the Report and Recommendation, Plaintiff's habeas corpus action should be dismissed; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation of September 14, 2005 be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Respondent's Motion for Summary Judgment is granted and the above-captioned habeas corpus action, therefore, is DISMISSED.¹

IT IS FURTHER ORDERED that for the reasons stated in the Report and Recommendation, the Court concludes that Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, the Court declines to issue a certificate of appealability or grant leave to proceed on appeal *in forma pauperis*. See Fed. R. App. Pro. 24(a).

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: October 7, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 7, 2005, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager

¹ In light of the Court's disposition of this matter, Petitioner's Motion to Appoint Counsel (Docket # 3) is DENIED as moot.